

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 3-:05-CV-035

**UNITED STATES CURRENCY IN THE
AMOUNT OF \$122,380.00, et al.,**

Judge Thomas M. Rose

Defendants.

**ENTRY AND ORDER OVERRULING CLAIMANT WESLEY RAY
BAKER'S MOTION TO DISMISS (Doc. #5)**

This is a civil forfeiture action filed by the United States of America pursuant to 21 U.S.C. §881(a)(4). In this action, the United States seeks forfeiture of United States currency and a Cadillac automobile.

Document #5 on the docket of this case is filed by Wesley Ray Baker and is captioned "Motion To Dismiss Forfeiture and Return of U.S. Currency and 1994 Cadillac To Proper Owner." This document claims ownership of the defendant property and argues that all of the property was obtained through lawful means.

In a forfeiture complaint, the United States need only alleged facts sufficient to support a reasonable belief that the government could demonstrate probable cause for forfeiture at trial.

United States v. Real Property Located at 2323 Charms Road, Milford Township, Oakland County, Michigan, 946 F.2d 437, 441 (6th Cir. 1991). In this case, the United States has alleged that the property was furnished or intended to be furnished by any person in exchange for

controlled substance, that the property is a thing of value used or intended to be used to facilitate one or more violations of 21 U.S.C. §§ 841 and 846 and that the property was used or intended to be used to transport, or in any manner, to facilitate the transportation, sale, receipt, possession or concealment of a controlled substance in violation of 21 U.S.C. §§841 and 846.

“[A] complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”*Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 811 (1993)(quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In this forfeiture action, the United States has alleged facts sufficient to support a reasonable belief that it could demonstrate probable cause at trial and Baker has not shown that there is no set of facts upon which the United States can prevail. Therefore, Baker’s Motion To Dismiss (doc. #5) is OVERRULED.

DONE and **ORDERED** in Dayton, Ohio, this Twentieth day of September, 2005.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record